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**Lampert & O'Connor, P.C.**  
1750 K Street NW  
Suite 600  
Washington, DC 20006

FCC/MELLON

JAN 04 2006

www.l-law.com  
info@l-law.com

Tel 202/887-6230  
Fax 202/887-6231

January 3, 2006

**VIA COURIER**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Wireline Competition Bureau – CPD – 214 Appls.  
P.O. Box 358145  
Pittsburgh, PA 15251-5145

Re: Application of EarthLink, Inc. and New Edge Networks, Inc.  
for Transfer of Control

Dear Ms. Dortch:

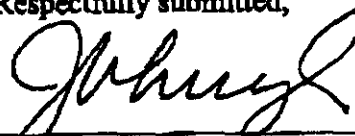
On behalf of EarthLink, Inc. and New Edge Networks, Inc., enclosed please find an original and five (5) copies of the above-referenced Application.

Also enclosed are a completed Fee Remittance Form 159 and a check in the amount of \$895.00 to cover the requisite filing fee required for this application.

Pursuant to Section 63.049(b) of the Commission's Rules, Applicants submit this filing as a combined international Section 214 transfer of control application and domestic Section 214 transfer of control application ("Combined Application"). Applicants have filed the Combined Application with the International Bureau through the IBFS filing system.

Please date-stamp the stamp-and-return copy and return it to the courier. Should you have any questions with respect to this filing, please contact Jennifer Phurrough at (202) 887-6230.

Respectfully submitted,



Jennifer L. Phurrough

Counsel for EarthLink, Inc.

Enclosures

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDINGFEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

Approved by OMB

3060-0589

Page 1 of 1

(1) LOCK BOX # 358115		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) <b>Donna N. Lampert</b>		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>\$895.00</b>	
(4) STREET ADDRESS LINE NO. 1 <b>1750 K Street NW</b>			
(5) STREET ADDRESS LINE NO. 2 <b>Suite 600</b>			
(6) CITY <b>Washington</b>		(7) STATE <b>DC</b>	(8) ZIP CODE <b>20008</b>
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>(202) 887-8230</b>		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) <b>0004-9717-92</b>		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME <b>EarthLink, Inc.</b>			
(14) STREET ADDRESS LINE NO. 1 <b>1375 Peachtree Street</b>			
(15) STREET ADDRESS LINE NO. 2 <b>Level A</b>			
(16) CITY <b>Atlanta</b>		(17) STATE <b>GA</b>	(18) ZIP CODE <b>30309</b>
(19) DAYTIME TELEPHONE NUMBER (include area code) <b>(404) 748-8634</b>		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) <b>0004-9719-90</b>		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE <b>CUT</b>	(25A) QUANTITY <b>1</b>	
(26A) FEE DUE FOR (PTC) <b>\$895.00</b>	(27A) TOTAL FEE <b>\$895.00</b>	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>Jennifer C. Phurrough</u> certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <u>Jennifer C. Phurrough</u>		DATE <u>1/3/06</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of  
Application of EarthLink, Inc.,  
and New Edge Network, Inc., dba  
New Edge Networks, for Approval of  
Transfer of Control

)  
)  
) File No. \_\_\_\_\_  
)  
) ITC-214-20020514-00229  
)  
)

**APPLICATION FOR TRANSFER OF CONTROL**

**EARTHLINK, INC.**

Samuel R. DeSimone, Jr.  
EVP, General Counsel  
1375 Peachtree Street, Level A  
Atlanta, GA 30309  
(404) 748-6634 tel  
(404) 287-4905 fax

**NEW EDGE NETWORK, INC., dba  
NEW EDGE NETWORKS**

Penny H. Bewick  
Vice President – External Affairs  
3000 Columbia House Boulevard  
Suite 106  
Vancouver, WA 98661-2969  
(360) 693-9009 tel  
(360) 693-9997 fax

Donna Lampert  
Mark O'Connor  
Jennifer L. Pharrrough  
LAMPERT & O'CONNOR, P.C.  
1750 K Street NW, Suite 600  
Washington, DC 20006  
(202) 887-6230 tel  
(202) 887-6231 fax

January 3, 2006

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of  
Application of EarthLink, Inc.,  
and New Edge Network, Inc., dba  
New Edge Networks, for Approval of  
Transfer of Control

)  
)  
) File No. \_\_\_\_\_  
)  
) ITC-214-20020514-00229  
)  
)

**APPLICATION FOR TRANSFER OF CONTROL**

New Edge Network, Inc., dba New Edge Networks, ("New Edge") and EarthLink, Inc. ("EarthLink") (collectively, the "Applicants" or the "Parties") hereby request authority pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), and Sections 63.03, 63.04, 63.12, 63.18 and 63.24 of the Commission's rules<sup>1</sup> for the transfer of control of New Edge to EarthLink. As described more fully below, in the Transaction a subsidiary of EarthLink, New Edge Merger Corporation ("MergerCo"), will merge with New Edge Holding Company ("New Edge Holding"), the parent of New Edge, with New Edge Holding continuing as the surviving corporation. After the Transaction is effected, New Edge will continue to operate in substantially the same manner, as an independent company and a wholly-owned subsidiary of New Edge Holding, which in turn will be a wholly-owned subsidiary of EarthLink.

**Transfer of Domestic and International Authority Pursuant to Section 63.04,**

Applicants are filing a joint application for the transfer of control of New Edge, a holder

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<sup>1</sup> All references to Section 63 or 64, or subparts thereof, refer to the Commission's rules as codified in 47 C.F.R.

of domestic "blanket" 214 authorization and an international 214 authorization,<sup>2</sup> to EarthLink. Applicants provide below the information required by Section 63.24(e)(2) and in Appendix 1 the information required by Sections 63.04(a)(6) through (a)(12).

Request for Streamlined Treatment The Applicants respectfully request streamlined treatment of this Application pursuant to Sections 63.03 and 63.12. This Application is eligible for streamlined treatment under Section 63.03(b)(1)(ii) because EarthLink is not a telecommunications provider and under Section 63.03(b)(2)(i) because (1) after the proposed transaction is consummated, the Applicants will have substantially less than a 10% share of the interstate, interexchange market, and will be providing competitive services exclusively in areas served by a dominant local carrier not a party to the proposed transaction, and (2) the Applicants are not, and after the transaction will not be, dominant with respect to any domestic service. This application also qualifies for streamlined treatment under Section 63.12 because neither New Edge nor EarthLink is affiliated with a foreign carrier or with a dominant U.S. carrier whose services Applicants may resell.

The Applicants respectfully request expedited consideration and approval of this Application so that they may implement their business plans, which include consummation of the Transaction and transfer of control, prior to March 31, 2006.

### SUMMARY

The Commission should approve expeditiously the acquisition of New Edge by EarthLink and the transfer of control of New Edge's Commission authorizations.

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<sup>2</sup> On May 31, 2002, New Edge received a Section 214 authorization for authority to operate as an international facilities-based carrier and to provide Global or Limited Global Facilities-Based Service and Global or Limited Global Resale Service. ITC-214-20020514-00229.

Together, the two companies will hasten and enhance the competitive broadband future for residential customers and small and medium enterprises ("SMEs"). As a result of this transaction, consumers and SMEs will have increased options for high-speed broadband services, including Voice over Internet Protocol ("VoIP") service, Internet access and other IP-enabled services.

There can be no doubt that the transaction will advance the public interest. The transaction is fully consistent with all FCC rules and policies, and it will have only pro-competitive effects.

While each company provides a multitude of services and products, they operate in separate and distinct horizontal and vertical markets. New Edge operates a nationwide, facilities-based broadband network that serves SMEs, larger corporations and other carriers. EarthLink is primarily a user of network services and a provider of Internet access and related IP-enabled services, such as VoIP, web hosting and Internet applications. EarthLink and New Edge do not compete to any appreciable extent. In the very limited markets where there are overlaps, the combined companies lack market power.

There is no possibility that this transaction could frustrate or undermine the Commission's policies. In fact, the transaction will significantly advance the Commission's goal of providing expanded consumer choice through marketplace forces by creating a larger, more financially stable and vertically integrated competitor in the SME and residential consumer broadband markets. In Section III we demonstrate the clear benefits resulting from the Transaction and explain why there is no conceivable risk to competition. There is consequently no need for the type of intensive inquiry that the

Commission has undertaken with respect to other, larger transactions that have raised substantial competitive and regulatory issues. Under any application of the public interest test, the Commission should rapidly conclude that this Application fully satisfies the requirements of the Act.

## **I. DESCRIPTION OF THE PARTIES**

The Applicants provide the following information pursuant to Sections 63.04(a)(6) and (7):

### **A. EarthLink, Inc. (FRN 0004-9719-90)**

EarthLink was founded in 1994. It is primarily an Internet service provider, providing nationwide Internet access and related value-added services to individual and business customers. Its major service offerings are narrowband, broadband or high-speed, and wireless Internet access and IP-enabled services; web hosting; and advertising and related services. EarthLink provides its broad range of services to more than five million customers through a nationwide network of dial-up points of presence, a nationwide broadband footprint and wireless technologies. EarthLink has grown its customer base organically through traditional marketing channels such as direct marketing; media advertising; alliances with strategic partners and original equipment manufacturers; retail outlets; and word of mouth and referral marketing. EarthLink has also grown its customer base through acquisitions of businesses and subscriber bases.

EarthLink's business strategy is to sustain and build upon its strong position in the U.S. Internet services market by focusing on high-growth opportunities such as broadband and value-priced narrowband access to generate organic subscriber growth; marketing high quality, differentiated products and services; improving operating



margins to fund growth; and expanding into new growth markets. A copy of EarthLink's Annual Report for the year ended December 31, 2004, on Form 10-K is attached as Appendix 2.

Earthlink does not provide ant telecommunications services and holds no authorizations from the Commission or any state.

**B. New Edge Networks, Inc. (FRN 0003-7204-71)**

New Edge is a national provider of secure multi-site managed data networks and dedicated Internet access. New Edge was originally incorporated as Access21 Corp. and later changed its name.

New Edge has one of the nation's largest network footprints. It owns a nationwide multi-services network with more than 850 carrier-class switches and Internet routers. As part of this network, New Edge has collocated multi-service switches in more than 580 incumbent local exchange carrier ("ILEC") central offices throughout the United States. New Edge has interconnection agreements ("ICAs") with the major ILECs, as well as many smaller independent local exchange carriers. These ICAs enable New Edge to collocate its multi-service switches in the central offices and provision services using unbundled network elements ("UNEs"). Where UNEs are not available, New Edge purchases underlying network services from the ILECs' access tariffs, or through commercial agreements and special contracts.

New Edge has a strong presence in small and midsize (i.e., Tier 2 and 3) markets in the U.S. and the capability of serving 100 percent of U.S. business addresses. It operates a carrier-class national backbone network based on Internet protocol ("IP") and Asynchronous Transfer Mode ("ATM") technology. New Edge is access technology

agnostic. It provides its products and services by seamlessly integrating a wide variety of last-mile broadband access services available through multiple carriers, technologies, and geographic regions. Technologies used to provide these services include DSL, frame relay, ATM, cable Internet access, and satellite.

New Edge's customers include telecommunications carriers, SMEs, and large corporations, and their telecommuters anywhere. These customers buy a wide variety of wide area networking ("WAN") products, including Managed Network Services, virtual private networks ("VPNs"), private networks, Managed VPN, frame relay, frame over DSL, ATM and private line. New Edge's Internet access solutions include xDSL services, DS1, DS3, OCx and Ethernet products. New Edge also offers wholesale xDSL, DS1 and IP transit solutions for ISPs and other data communications providers. New Edge seeks to differentiate its customers' service experience by leveraging its provisioning experience with all carriers and through multiple distribution channels, streamlining its customers' experiences.

## **II. DESCRIPTION OF THE TRANSACTION**

Pursuant to an Agreement and Plan of Merger executed on December 12, 2005, by New Edge Holding, MergerCo and EarthLink, MergerCo, a wholly-owned subsidiary of EarthLink, will merge with New Edge Holding, the parent of New Edge, with New Edge Holding continuing as the surviving corporation. After the Transaction is effected, New Edge will continue to operate in substantially the same manner, as an independent company and a wholly-owned subsidiary of New Edge Holding, which in turn will be a wholly-owned subsidiary of EarthLink. Following the merger, New Edge will continue to operate as an independent company under its current name as a wholly-owned

subsidiary of EarthLink, in substantially the same manner as it has in the past. Upon completion of the merger, EarthLink will control New Edge through the ownership of 100% of the outstanding common stock of New Edge Holding. Thus, after the Transaction, New Edge will have a different capital structure and a new controlling stockholder. The structure of the transaction is shown in the graphic in Appendix 3.

The Transaction will be essentially transparent to customers of New Edge. Because it is a stock transaction at the holding company level, the transfer of control of New Edge will not result in a change of carrier for any customer. After consummation of the Transaction, New Edge will continue to provide the same service at the same rates, terms and conditions as at present. The Transaction will not result in discontinuance of the service of any New Edge customer. The operations of New Edge will continue to be supervised by the same management, technical and customer service supervisors as at present. In addition, the expertise of EarthLink's management, marketing and customer service personnel will be available to improve New Edge's business after the Transaction closes.

### **III. PUBLIC INTEREST STATEMENT**

#### **A. The Public Will Benefit from This Transaction**

The acquisition of New Edge by EarthLink will result in significant benefits for consumers, and will advance important public policy goals. In particular, the combination of New Edge's facilities-based network and its expertise in SME and carrier sales with EarthLink's marketing staff and expertise, its corporate resources, and its strength in providing consumer-friendly Internet services, will create a stronger competitor in the residential and SME broadband market. Further, the Transaction will

increase competition in Tier 2 and 3 SME and residential U.S. markets, areas where competition has to date lagged behind that found in larger urban centers. The

Transaction will result in several additional synergies and benefits:

- Given the complementary nature of New Edge's and EarthLink's products and services, the Transaction enhances the opportunity to realize EarthLink's strategic objective of achieving greater scale and presence in the SME market.
- The Transaction provides both companies with significant new customer relationships and creates an opportunity for both companies to offer additional products and services to each other's customers.
- The Transaction provides both companies with greater capabilities to market and offer solutions to businesses and to differentiate themselves significantly in the market.
- The merged company will be able to bring new services and products to the marketplace more quickly than either could do separately.

**B. The Transaction is in the Public Interest**

Under Section 214 and Section 310 of the Act, the Commission must approve transfers of licenses and authorizations if it finds that the "public interest" would be served by the approval. The vast majority of proposed transfers -- particularly those that qualify for streamlined treatment, as does this Application -- are routinely approved once the Commission has satisfied itself that the transferee is financially and legally qualified. In such cases, the Commission concludes that further no inquiry is necessary.

The Applicants respectfully submit that this Transaction falls comfortably within the scope of that vast majority of transfer applications that are routinely approved. There is no question that EarthLink is financially and legally qualified to hold Commission licenses and authorizations. Furthermore, the Transaction plainly "could not frustrate or

undermine [the Commission's] policies."<sup>3</sup> To the contrary, it advances those policies, particularly the goal of increased competition in broadband markets throughout the country.

First, the Applicants' assets and businesses are almost entirely complementary. There is no horizontal overlap with New Edge's major lines of business, since EarthLink does not provide any telecommunications services. There is therefore no loss of actual or potential competition in any of these markets and no inconsistency with the Act's pro-competitive goals. To the extent that there is any overlap between the Applicants' businesses, it could only possibly be in the provision of Internet access to SMEs. This is a market with literally thousands of competitors, and EarthLink and New Edge have a combined market share of between two and three percent. Therefore, the merged company would have no incentive, and certainly no ability, to raise prices or restrict output. Again, there is no potential for anti-competitive results from the Transaction.

Second, there is no existing vertical relationship between EarthLink's and New Edge's businesses, and there is no appreciable prospect of any competitive harm resulting from the vertical integration of those businesses.

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<sup>3</sup> *Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee*, Memorandum Opinion and Order, FCC 99-24 (rel. Feb. 18, 1999) ("*AT&T/TCI Order*") at ¶ 16. For certain transactions, the Commission has applied a standard first articulated in the *Bell Atlantic/NYNEX Order*, 12 FCC Rcd. 19985, 20008-9 (1997). Under that standard, the Commission considers whether "the transaction violates our rules, or would otherwise frustrate our implementation or enforcement of the Communications Act and federal communications policy." *AT&T/TCI Order* at ¶ 14. In such cases, the Commission "weigh[s] any potential competitive harms and benefits to determine whether the proposed transaction would promote the public interest." *Id.* at ¶ 15. Even if this test were applied, the instant Transaction would also clearly be in the public interest.

The public interest calculus is therefore clear: the transaction easily meets whatever public interest standard the Commission employs under sections 214 of the Act.

#### IV. INFORMATION REQUIRED BY SECTION 63.24(e)

The Applicants submit the following information pursuant to Sections 63.24(e) and 63.18:

##### Responses to Section 63.18(a)-(d)

##### (a) Name, address and telephone number of Applicants:

New Edge Network, Inc., dba New Edge Networks  
3000 Columbia House Boulevard, Suite 106  
Vancouver, WA 98661  
(360) 693-9009 tel

EarthLink, Inc.  
1375 Peachtree Street, Level A  
Atlanta, GA 30309  
(404) 815-0770 tel

##### (b) State of Incorporation

New Edge, New Edge Holding Company, Merger Co, and EarthLink are Delaware corporations.

##### (c) Correspondence concerning this application should be sent to:

Donna Lampert  
Mark O'Connor  
LAMPERT & O'CONNOR, P.C.  
1750 K Street NW  
Suite 600  
Washington, DC 20006

*With a copy to:*  
Samuel R. DeSimone, Jr.  
EVP, General Counsel  
EarthLink, Inc.  
1375 Peachtree Street, Level A  
Atlanta, GA 30309  
(404) 748-6634 tel

*With a copy to:*  
Penny H. Bewick  
Vice President - External Affairs  
New Edge Networks  
3000 Columbia House Boulevard  
Suite 106  
Vancouver, WA 98661-2969

(404) 287-4905 fax

(360) 693-9009 tel

(360) 693-9997 fax

(d) As a nondominant provider of interstate services, New Edge holds a "blanket" domestic Section 214 authorization pursuant to Section 63.01(a). On May 31, 2002, New Edge also received a Section 214 authorization for authority to operate as an international facilities-based carrier and to provide Global or Limited Global Facilities-Based Service and Global or Limited Global Resale Service. ITC-214-20020514-00229. EarthLink does not hold any Commission authorizations.

Responses to Section 63.18(h)-(p)

(h) Following consummation of the proposed Transaction, New Edge will continue to operate as an independent company under its current name as a wholly-owned subsidiary of EarthLink. EarthLink will own 100% of the outstanding common stock of New Edge. EarthLink is a Delaware corporation located at 1375 Peachtree Street, Atlanta, GA 30309. Its principal business is providing Internet access to businesses and individuals.

Following consummation of the proposed transaction, the following persons or entities will indirectly own 10% or more of the equity of New Edge:

Barclays, PLC

Following consummation of the proposed transaction, there will be no interlocking directorates with any foreign carrier.

(i) EarthLink is not, and is not affiliated with, a foreign carrier.

(j) EarthLink certifies that it does not seek to provide international telecommunications services to any country where (i) New Edge is a foreign carrier; (ii)

New Edge controls a foreign carrier; (iii) any entity that owns more than 25% of New Edge, or that controls New Edge, controls a foreign carrier in that country; or (iv) two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of New Edge and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international telecommunications services in the United States.

(k) Not applicable.

(l) Not applicable.

(m) Not applicable.

(n) New Edge certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route, and New Edge and EarthLink certify that neither will enter into such agreements in the future.

(o) The Applicants certify that they are not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

(p) EarthLink desires streamlined processing pursuant to Section 63.12. This Application qualifies for streamlined treatment under Section 63.12 because neither New Edge nor EarthLink is affiliated with a foreign carrier or with a dominant U.S. carrier whose services Applicants may resell.

#### **V. INFORMATION REQUIRED BY SECTION 63.04(b)**


The additional information required by Section 63.04(b) is provided in Appendix 1.



**CONCLUSION**

The forgoing application demonstrates that the proposed Transaction and the resulting transfer of control satisfy the public interest, convenience and necessity. The Commission should approve them expeditiously.

Respectfully submitted,



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Donna Lampert  
Mark O'Connor  
Jennifer L. Phurrough  
LAMPERT & O'CONNOR, P.C.  
1750 K Street NW, Suite 600  
Washington, DC 20006  
(202) 887-6230 tel  
(202) 887-6231 fax

---

Penny H. Bewick  
Vice President - External Affairs  
New Edge Networks, Inc.  
3000 Columbia House Boulevard  
Suite 106  
Vancouver, WA 98661-2969  
(360) 693-9009 tel  
(360) 693-9997 fax

Samuel R. DeSimone, Jr.  
EVP, General Counsel  
EarthLink, Inc.  
1375 Peachtree Street, Level A  
Atlanta, GA 30309  
(404) 748-6634 tel  
(404) 287-4905 fax

January 3, 2006

**CERTIFICATION OF SAMUEL R. DESIMONE, JR.**

I, Samuel R. DeSimone, Jr., hereby certify under penalty of perjury that:

1. I have reviewed the attached application for approval of transfer of control of New Edge Networks, Inc. to EarthLink, Inc., and that all statements made therein are true and correct to the best of my belief; and
2. I am the Executive Vice President and General Counsel of EarthLink, Inc. and, as such, I am fully authorized by EarthLink to attest to the veracity of the statements made in the attached application.

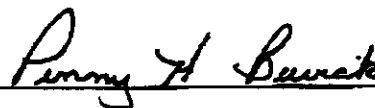


Samuel R. DeSimone, Jr.

**CERTIFICATION OF PENNY H. BEWICK**

I, Penny H. Bewick, hereby certify under penalty of perjury that:

1. I have reviewed the attached application for approval of transfer of control of New Edge Networks, Inc. to EarthLink, Inc., and that all statements made therein are true and correct to the best of my belief; and
2. I am the Vice President of External Affairs for New Edge Networks, Inc. and, as such, I am fully authorized by New Edge Network to attest to the veracity of the statements made in the attached application.



Penny H. Bewick

## **LIST OF APPENDICES**

- 1. Additional information required by Section 63.04(a)(6) through (a)(12) for transfer of domestic Section 214 authorization held by New Edge**
- 2. Annual Report of EarthLink, Inc. for the year ended December 31, 2004, on Form 10-K**
- 3. Pre-Transaction and Post-Transaction Corporate Organization Chart for New Edge**

8/10/2006 13:28 WILEY, REIN & FIELDING NO. 389 022

## APPENDIX 1

### ADDITIONAL INFORMATION REQUIRED BY SECTION 63.04

The Applicants submit the following information regarding the request to transfer the New Edge domestic Section 214 authorization pursuant to Sections 63.04(a)(6) through (a)(12):

(6) A description of the transaction is provided in Section II of the Application.

(7) New Edge provides the telecommunications services summarized in Section I(B) of the Application, and it provides those services throughout the United States. EarthLink provides no telecommunications services.

(8) This Application is eligible for streamlined treatment under Section 63.03(b)(1)(ii) because EarthLink is not a telecommunications provider and under Section 63.03(b)(2)(i) because (1) after the proposed transaction is consummated, the Applicants will have substantially less than a 10% share of the interstate, interexchange market, and will be providing competitive services exclusively in areas served by a dominant local carrier not a party to the proposed transaction, and (2) the Applicants are not, and after the transaction will not be, dominant with respect to any domestic service.

(9) There are no other Commission applications related to this transaction.

(10) The Applicants are not requesting special treatment because one of them is facing imminent business failure.

(11) There are no separately filed waiver requests related to this transaction.

(12) The Applicants have demonstrated in Section III of the Application the Transaction's pro-competitive effect in domestic markets, and how grant of the Application will serve the public interest, convenience and necessity.

**APPENDIX 2****EARTHLINK, Inc. 2004 Annual Report on Form 10-K**